IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2215 OF 2006

Marwadi Vidyalaya Trust ... Petitioner

Vs.

The State of Mah. and Ors. ... Respondents

Mr. A.V. Anturkar,Sr. Counsel with Mr. A.V. Chatuphale for Petitioner.

Mr. A.A. Kumbhakoni, Associate Advocate General for R. Nos. 1 and 2.

Mr. R.A. Rodrigues for R. No. 3.

WITH
WRIT PETITION (L) NO. 2056 OF 2006

Gajanan Maharaj Shikshan Prasarak Mandal ... Petitioner

Vs.

The State of Mah. and ors. ... Respondents

WITH
WRIT PETITION (L) NO. 2076 OF 2006

Kakasaheb K. Wagh Educational Sanstha ... Petitioner

Vs.

The State of Maharashtra ... Respondents

Mr. A.V. Anturkar,Sr. Counsel with Mr. S.B. Deshmukh for Petitioner.

Mr. A.A. Kumbhakoni, Associate Advocate General for R. Nos. 1.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: SEPTEMBER 12, 2006

P.C.:

. Rule in all the Petitions. Heard forthwith.

. As a common question of law arises in these petitions, they are being disposed of by this common order. The common question is whether the Petitioner can admit students to their institution solely based on the approval granted by A.I.C.T.E. and without obtaining affiliation from the University or the Control Board.

2. The Petitioners herein had applied to the All India Council for Technical Education (hereinafter referred to as "AICTE" for the sake of convenience and brevity) for commencing MBA/MCA course. AICTE granted permission to the Petitioners institution. For obtaining admission in the institution leading to MBA/MCA, it is necessary for the candidate to clear Common Entrance Test (C.E.T.) and only upon clearing the said test, the candidate can obtain an admission in the Institution. Various private colleges came together and formed an Association of Management of the MBA/MMS institutes (AMMI) which conducts the C.E.T. The result was declared on 7th August, 2006. The Director of Technical Education had authorised the AMMI to prescribe the last date of admission. In pursuance of the said authorisation, AMMI had prescribed 7th August, 2006 as the last date of admission to the Institutions.

. The Petitioners contend that the State of Maharashtra has not considered the name of the Petitioners to be included in the colleges available for imparting education leading to MBA for the year 2006-07. Though the Petitioners have been given permission by the AICTE and although there are large number of students who have passed C.E.T. on the merit list and may otherwise desire to join and study with the Petitioners institution, because of the respondents action in not including the name of the Petitioners in the list of colleges, a large number of students will be deprived of prosecuting their studies in the Petitioner institution.The Petitioners it is submitted have made huge expenditure in establishing their institution and also appointed staff to commence course for the academic year 2006-07. It is submitted that the State Government, respondents in this Petition cannot be permitted to override the statutory recognition which has been given by AICTE. Reliance is placed in the case of Yerala Medical Trust and Research Centre and Anr. Vs. State of Maharashtra and Ors. 2006(1) Bom 701 to submit that the action of the respondent in refusing permission to the Petitioners to admit students is arbitrary and illegal. Our attention is also invited to the judgment passed by the Nagpur Bench of this court in Writ petition No. 4133 of 2006 by order dated

11.8.2006 to point out that in similar situations, another Division Bench of this court have directed that the respondents therein to take steps to fill in the seats in terms of the roster issued by AMMI. The CET was held on 30.7.2006 and the results were declared on 7.8.2006. The cut off date was 16.8.2006. That petition was disposed of on 11.8.2006. It is the case of the Petitioners that the said judgment is applicable to them. In these circumstances, the relief as prayed for.

3. The Respondents have not filed their replies. But they have argued the matter based on the documents which were available and the judgments of this court. In so ar as the admission process is concerned, we may at once note the judgment in Yerala Medical Trust (supra). In that case, the admission was to the MBA course. After considering the earlier judgments of this court, the procedure for admission and the ordinances of the University in the matter of completing the academic term, we had issued the following directions :

> "(i) The State Government will consider the intake capacity as on 30th June, 2005 to commence the process for filling in seats subject to what is set out hereunder:

(ii) If before the last date of the admission/counselling process, AICTE increases the intake of existing institutions or grants permission for new colleges, the State Government will take into consideration such additional seats and take steps to fill in these seats from amongst students already on the list and without interfering with the admission process already completed;

(iii) This would, however, be subject to the condition that such institutions must have affiliation in terms directed by Respondent No. 3 and the institutional students are in a position to complete the necessary number of days for appearing for the examination in terms fixed by Respondent No. 3 as followed by Respondent No. 6.

(iv) It is made clear that those who have already been admitted before the increased intake or approval by Respondent No. 3 by granting approval of new institutions or additional intake will not be entitled to apply nor will the State consider their applications for admission in the new

> college where approval has been granted or intake increased."

. If we consider this judgment we do not find there is any departure by the Nagpur Bench of this Court in Writ Petition No. 4133 of 2006. That Petition was disposed of on 11.8.2006. The admission process was still on and according to Petitioners themselves the cut off date for admission was 16.08.2006. Apart from that, it appears that the college had affiliation and it was permitted to start an additional course. Whether the additional course required further affiliation/permission to start the course cannot be made out from the facts.

. In the course of the arguments, our attention was invited to the clause imposed by AICTE while granting approval and which reads as under :

> "2.(c) : That the admissions to the courses shall be made only after the affiliating University/State Board has given permission to start the course."

. In other words, the institution in whose favour approval has been granted by AICTE cannot admit students to the courses without the affiliating University/State Board giving permission to start

the course.

4. On behalf of the Petitioner, the learned counsel submits that once AICTE has granted approval, the University/State Board is bound to grant affiliation as it is a mere formality. At any rate, it is submitted that once the AICTE grants permission, it is not open to the University/State Board to deny affiliation to the Institution. It is therefore, submitted that that clause would not stand in the way of permitting the petitioners to admit students for the courses approved by A.I.C.T.E. from the panel of candidates in the merit list conducted by IMMA through C.E.T. Reliance has also been placed on some judgments which we will advert to subsequently. It may be mentioned that our invitation was invited to the order passed by this court to which one of us (Rebello,J.) was party, wherein we had directed the respondents to admit students. Reference was also made to the Judgment in Writ Petition (L) No. 1753 of 21006 and Writ Petition (L) No. 1876 of 2006. We may point out that in both the cases, the orders of this court were before 18.8.2006. Apart from that our attention was not invited to the clause as contained in the approval letter which requires the institution not to admit the students to the course untill they are affiliated. These judgements

therefore, would be of no assistance to the Petitioners. Our attention is also invited to the order passed in Writ Petition No. 5537 of 2006 and Writ Petition No. 532 of 2006 on 18.8.2006 by another Division Bench. The learned Division Bench has relying upon Yerala Medical (supra) and the two judgments referred to earlier, had issued directions for filling in seats in Pharmacy course. It may however, be made clear that the Division Bench also imposed direction that it is subject to the condition that such institution must be affiliated with the University as directed by AICTE.

. The learned counsel for the Petitioner however, points out that Section 83 of the University Act which requires that the permission be taken from the State Government would be non applicable considering the approval granted by AICTE. It is pointed out that when there is Central Act and the Central Act covers the subject and before granting approval the authority constituted under the Central Act is required to take into consideration various factors, then to that extent the provisions of the State enactment would be inconsistent and need not be relied upon, for that purpose reliance was placed on State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, reported in CDJ 2006 SC 279. The Supreme Court has observed that

once the recognition has been granted by the NCTE under Section 14(6) of the Act, every university (examining body) is obliged to grant affiliation to such institution and Sections 82 and 83 of the University Act will not apply to such cases.

. Our attention is also invited to the judgment in State of Tamilnadu and another Vs. Adhiyaman Educational and Research Institute and Others, (1995) 4 S.C.C. 104 in which it is observed that the provisions of the State Act which are inconsistent with the provisions of the Central Act to the extent they are inconsistent, are void. Next our attention was invited to the judgment in Jaya Gokul Educational Trust Vs. Commission and Secretary to Government Higher Education Department and another, (2000) 5 S.C.C. 231 where once again the Apex Court has held that grant of approval for the establishment of Technical Institution is governed solely by the AICTE Act and to that extent the provisions of any enactment conferring powers on the State Government would be void.

5. We agree with the Petitioners that considering the law declared by the Apex Court in the matter of approval for opening a college, to the extent that AICTE Act operates in the field, the provisions of the local Act including University Act to that

extent would not be applicable. That however, does not mean that the institution to whom approval has been granted need not take affiliation from the University. AICTE itself was aware of the position and has inserted the clause requiring institutions to whom approval is granted to make admissions only after grant of affiliation by the University/State Board to start the course. It is thus clear that it will not be open to the Petitioner institution to admit students without first getting affiliation. At the highest the Petitioners may point out to the University at the stage of affiliation that they may not be required to go through the entire gamut or process for grant of approval which had already been undertaken by the AICTE. The Institution however, will have to comply with other requirements before getting first time affiliation to start the courses.

6. In the instant cases, therefore, considering the condition imposed by AICTE and the directions issued by us in Yerla Medical Trust (supra),. we are of the considered opinion that on the facts of the present cases, it will not be possible for us to issue directions which have been prayed for. In the light of that, Rule discharged in all the Petitions. There shall be no order as to costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**